

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3522 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

JETHABHAI KARSANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS MEGHA JANI for Petitioner
MRS AH YAGNIK, A.P.P. for Respondent No. 1
MR YS LAKHANI for Respondent No. 2 to 9

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 05/08/97

ORAL JUDGEMENT

Rule. Learned Assistant Public Prosecutor Mrs. A.H. Yagnik waives service of Rule for Respondent No.1 and learned Advocate Mr.Yogesh Lakhani waives service of Rule for Respondents Nos.2 to 9.

2. At the outset, learned Advocate Mrs.Megha Jani did not press this application so far as respondents Nos.5, 6, 8 and 9 are concerned and therefore Rule is discharged so far as respondents Nos. 5, 6, 8 and 9 are concerned.

3. This is an application for cancellation of bail granted in favour of respondents Nos.2, 3, 4 and 7 by this court in Criminal Miscellaneous Application No.2123 of 1997. One of the offences alleged against the said respondents is under provisions of Section 302 of the I.P.C. Learned Advocate Mrs.Jani has submitted that the said respondents were enlarged on bail by this court on 2nd May 1997 on certain conditions. One of the conditions on which they were enlarged on bail was with regard to not entering the local limits of Deesa Taluka till the trial is over without prior permission of the High Court except for the purpose of attending the court in connection with the case.

4. It has been submitted by learned Advocate Mrs.Jani for the petitioner that, in spite of the abovereferred condition incorporated in the order whereby bail was granted in favour of the said respondents, the respondents, namely, respondents Nos.2, 3, 4 & 7, had entered the limits of Deesa Taluka on 21st May 1997 and had given threats to the present petitioner for compromising the case which was filed against them. A copy of the complaint being C.R. No.58 of 1997 filed at Agathara Police Station is annexed and marked Annexure-C to the present application. It has been stated in the said F.I.R. that the said respondents had given threats to the petitioner and had also caused injuries to Shri Maghabhai Damrabhai Patel. Injury Certificate issued by the Medical Officer of Government Hospital, Deesa in respect of injuries suffered by Shri Maghabhai Damrabhai Patel is at page 12 of the application. It has been further submitted by learned Advocate Mrs.Jani that, in pursuance of the said F.I.R. filed against the said respondents, chargesheet has also been filed on or about 17th April 1997. She has also submitted that there is a prima facie case against the said respondents to the effect that they had abused their liberty and had violated one of the conditions on which bail was granted to them by this court.

5. In the circumstances she has prayed that bail granted in favour of the said respondents be cancelled and they be arrested as soon as possible especially in view of the fact that the trial is in progress and

therefore chances of tampering with evidence are likely to be more at this stage.

6. Learned Advocate Mr.Yogesh Lakhani appearing for the said respondents has submitted that the subsequent F.I.R. against the said respondents is a concocted one and is not a genuine one. It has been submitted that, as the said respondents were enlarged on bail by this court and as the present petitioner is somehow keen to see that all the respondents are again sent behind bars, the aforesaid false complaint was lodged against them. He has further submitted that, in pursuance of the conditions incorporated in the order of bail granted by this court in Criminal Miscellaneous Application No.2123 of 1997, the concerned respondents have never entered the limits of Deesa Taluka and, in fact, they have stayed at village Virol of Dhanera Taluka. He has further submitted that, in the instant case, the State has not filed an application for cancellation but the original complainant has approached this court for cancellation of the bail. He has filed an affidavit-in-reply of respondent No.3 setting out the above-referred fact.

7. In pursuance of Notice issued by this court, learned Assistant Public Prosecutor Mrs. A.H.Yagnik has produced before this court relevant papers and has also submitted that statements of certain independent persons were recorded in pursuance of the F.I.R. filed by the present petitioner. She has relied upon statements of S/Shri Naranbhai, Punabhai and Shankarbhai to show that the said respondents had, in fact, entered the limits of Deesa Taluka and had given threats to the present petitioner and had caused injuries to Shri Maghabhai Damrabhai Patel. The said fact was also reported to the Sarpanch of village Pechhadal Shri Shankarbhai Darmabhai and his statement was also recorded by the Police Officer during investigation in the F.I.R. filed by the present petitioner. She has further submitted that the application for cancellation should not be rejected merely on the ground that the State has not filed an application for cancellation. In the instant case, the original complainant was given threats by the concerned respondents and therefore the original complainant had immediately approached the Police authorities with an FIR and ultimately after investigation, chargesheet has also been filed in pursuance of the said FIR against the present respondents.

8. After having heard the concerned Advocates and on perusal of papers, I am of the view that respondents Nos.2, 3, 4 & 7 had committed breach of conditions on

which they were enlarged on bail by this court. It prima facie appears that they had given threats to the present petitioner who is an important witness in the trial against them. It is pertinent to note that chargesheet has also been filed in pursuance of the F.I.R. filed against the present respondents and therefore prima facie I am inclined to believe that the said respondents had committed breach of conditions on which they were enlarged on bail. Merely because the State has not approached this court with an application for cancellation of bail cannot be a ground for rejection of this application. The aggrieved party was the original complainant when he was given threats. He had promptly reported to the Police about the incident and therefore it cannot be said that the present application deserves rejection merely on the ground that an application for cancellation of the bail has not been filed by the State.

9. In view of the fact that trial is in progress and is likely to be concluded within a short period, chances of tampering with evidence or influencing witnesses might be enhanced and therefore it would be just and proper to direct the Investigating Officer to take the said respondents in custody as soon as possible especially when the said respondents have abused their liberty so as to adversely affect the proceedings of the main trial which is being faced by them. Learned Advocate Mr.

Lakhani appearing for the respondents has also submitted that the respondents would like to approach the Hon.'ble Supreme Court against the judgment which might be rendered in this matter and therefore he has prayed that some time be granted to the respondents to surrender so that, in the meantime, they can approach the Hon.'ble Supreme Court. He has further submitted that the trial has already commenced and appropriate direction may be given to the Sessions Court for expeditious hearing of the trial.

10. In the circumstances, this application allowed. Bail granted by this court in Criminal Miscellaneous Application No.2123 of 1997 on 2nd May 1997 in favour of present respondents Nos.2, 3, 4 & 7 are hereby cancelled. Intimation of this order be sent to the concerned Investigating Officer so that needful can be done for arrest of the said respondents. As prayed for by the respondents, time upto 01.9.1997 is granted for their surrendering and therefore this order should not be implemented till 01.9.1997.

11. In view of the fact that the trial has already

commenced, it is hoped that the Sessions Court will try to expedite the trial.

Rule is made absolute. Direct Service is permitted.

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